IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7897 OF 2006

1. Mr.Pankaj Velji Gosrani Karta of HUF of Pankaj Velji Gosrani, Age: 34 yrs.

2. Mr.Vissanji Govindji Thakkar, Age 40 yrs.

3. Mr.Ravji Tribhuvandas Patel, Age 58 yrs.

4. Mr.Harinder Singh Budhiraja Age 48 yrs.

5. Mr.Ramniklal A. Gudhaka, Age 48 yrs.

6. Dr.Dhiraj B.Shah, Age: 46 yrs.

7. Mr.Kamlesh Gajaria, Age: 42 yrs.

8. Mr.Hanskumar SDhah, Age: 47 yrs. ..Petitioners.

All of Mumbai, Indian Inhabitants, All Residing at their respective flats in a building known as Shobha Suman,situate at village Nahur, Madan Mohan Malaviya Marg, Opp. Telephone Exchange, Mulund (W), Mumbai - 400 080.

V/s.

1. M/s.Madhu Construction Pvt. Ltd. a private limited company incorporated under the Companies Act, 1956, having its registered office at 38, Vikas Centre, S.V. Road, Santa Cruz (West), Mumbai - 400 054.

2. Mr.Navinchandra M. Dedhia, Age: 57 yrs. of Mumbai Shobha Suman, Pandit Madan Mohan Malaviya Marg, Opp. Telephone Exchange, Mulund (W), Mumbai - 400 080. ..Respondents.

Mr.R.M.Tiwari with Ms.T.Dalvi for petitioners.

Mr.Shahrukh Kathawala with Mr.A.H.Palekar for respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 13th APRIL, 2007.

ORAL JUDGMENT

The submissions of the parties were heard on the last date.

2. In view of the order dated 5th February, 2007, this petition was taken up for final hearing. By this Writ Petition Article under 227 of the Constitution of India, the petitioners who are original plaintiffs have taken an exception to the Judgment and order dated 19th September, 2006 passed by the learned Judge of the City Civil Court, Mumbai by which a chamber summons taken out by the petitioners / plaintiffs for the amendment of plaint has been rejected.

3. The petitioners (original plaintiffs) are some of the flat purchasers of the flats in a building constructed by the first respondent by the name Shobha Suman. The building consists of stilt and 16 upper floors consisting of number of residential flats. The first respondent is a builder and developer. There were

litigations between the parties regarding the registration of the Co-operative Society of the flat purchasers. The present suit has been filed by the petitioners essentially for seeking enforcement of the obligations of the first respondent under the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer Act, 1963 (hereinafter referred to as the "said Act"). A prayer in the suit is for a decree directing the first respondent to execute a conveyance of the suit property in favour of a co-operative Society of the flat purchasers. A prayer is also made to restrain the first respondent from putting up any construction of another building on the property in question. A prayer is also made for appointment of a Court Receiver. By the Chamber summons taken out by the petitioners, various prayers were sought to be added to the plaint. The first prayer is for demolition of the five row houses constructed on a portion of the suit property and for a direction to the first respondent to hand over possession of the said portion. A prayer is sought to be added for rendering the true and complete account of the amounts / deposits collected from the flat purchasers. Another prayer is for a direction to the first respondent to pay a sum of Rs.5 lakhs per month for the entire period for which the first respondent has deprived the petitioners and other flat purchasers of the

use, enjoyment and occupation of the open land and ground. Another prayer sought to be incorporated is that the aforesaid amount be directed to be paid either to the petitioners or to the Co-operative Housing Society formed by the flat purchasers. By the said Chamber Summons, permission is sought for incorporating certain additional paragraphs in the plaint relating to additional reliefs which are sought to be added.

4. The learned counsel for the petitioners submitted that the impugned order is perverse. He has drawn my attention to the well settled principles governing the amendment of pleadings. He submitted that the proposed amendment does not change the nature of the suit and no prejudice will be caused to the respondents, if the amendment is allowed.

5. The submission of the learned counsel appearing for the first respondent is that apart from the fact that the chamber summons has been belatedly taken out, the proposed amendment is malafide. He invited my attention to the order dated 15th July, 2005 and 15th February, 2006 passed by this Court in Appeals from order. He submitted that the order dated 15th February, 2006 has been passed by this Court directing that the suit shall be expeditiously disposed of. It is submitted

that while passing order dated 15th February, 2006 it was in fact conceded that the first respondent was ready to suffer the impugned order of injunction granted by the trial Court as the suit was to be disposed of expeditiously. He submitted that if the amendment is allowed, the suit cannot be disposed of expeditiously. He also pointed out that if the amendment is allowed, the jurisdiction of the City Civil Court to entertain the suit will be ousted and, therefore, the hearing of the suit will be prolonged which will cause prejudice to the first respondent. He submitted that the order dated 15th February, 2006 is passed on the basis of a concession given by the first respondent on understanding that the suit was to be disposed of within a time bound schedule. He submitted that the first respondent will suffer prejudice as interim order which is confirmed by order dated 15th February, 2006 will continue to operate for a very long time, if the amendment is allowed.

6. I have considered the submissions made by the learned counsel appearing for the parties. In so far as the amendment of pleadings is concerned, the law is very well settled. The Court is required to liberally allow the amendment of pleadings provided the amendment does not change the nature of the suit and it is not barred by limitation. In the present case, the flat purchasers

have filed the said suit against the first respondent / Developer for enforcement of the obligations of the first respondent under the said Act of 1963. In this case, the amendment is not opposed on the ground that the same is barred by limitation or that the same will change the nature of the suit.

7. The contention of the petitioners is that all the five row houses constructed by the first respondent are contrary to the provisions of law. A contention is sought to be raised by the proposed amendment that under the provisions of the said Act of 1963, the first respondent-builder is under an obligation to render true and correct account of the amounts received from the flat purchasers. It is contended that by illegally and unauthorisedly constructing the row houses on the open space, the flat purchasers have been put to loss as they were denied the use of the open space and, therefore, the claim for compensation is sought to be added. At this stage, the merits of the proposed amendments cannot be considered. Suffice it to say that considering the frame of the original suit, the proposed amendment will not change the nature of the suit. It was contended that the plaint was allowed to be amended earlier and at that time, a prayer was made for grant a leave under Order II Rule (2) 3 of the Civil Procedure Code, 1908 to file a

separate suit as regards the row houses. Merely because a leave is sought earlier, the amendment cannot be refused. It is not the case that a leave was in fact granted by the trial Court. Since the suit is based on the rights and liabilities under the said Act of 1963, the proposed amendment is necessary to avoid multiciplicity of the proceedings.

8. It is true that if the amendment is allowed, prima facie, the jurisdiction of the trial court may be ousted as the jurisdiction is restricted to the claim upto Rs.50,000/-. However, this aspect will have to be decided by the trial Court.

9. In my view, the learned trial Judge ought to have allowed the amendment. The trial Judge has observed that the intention of taking out the chamber summons was not good and innocuous. The learned trial Judge has referred to the direction issued by this Court to dispose of the suit in a time bound schedule. The trial Court held that if the plaint is required to be returned, it will delay the disposal of the suit. Therefore, the trial Court has observed that proper course for the petitioners is to get the suit disposed of and thereafter to file a separate suit for prayers which are sought to be incorporated by the petitioners. As I have observed

earlier, the amendment is necessary to avoid multiplicity of proceedings. If as a result of the delay in disposing of the suit and the continuation of interim relief, the first respondent is likely to suffer any serious prejudice, the first respondent can always apply for appropriate modification of the interim order on the basis of the change of circumstances brought about by the grant of amendment. The said liberty will have to be granted in favour of the first respondent as it is a fact that now the suit cannot be decided within the time frame fixed by this Court.

10. I am making no observation on merits of the rival case. Suffice it to say that a case is made out by the petitioners for permitting the amendment of the plaint.

11. In so far as the payment of Court fees on the amended plaint is concerned, the trial Court will hear the parties and pass appropriate orders. The learned trial Judge will also have to consider the question whether as a result of the amendment of the plaint, the jurisdiction of his Court will be ousted. These questions which are required to be considered by the Trial Court after the amendment is carried out to the plaint.

12. If the learned Judge finds that the petitioners / original plaintiffs are liable to pay any additional Court fees on the amended prayers, the trial Court will issue necessary directions in that behalf.

13. Hence this petition is disposed of by passing the following order.

i. The impugned Judgment and order dated 19th September, 2006 is quashed and set aside and the Chamber Summons No.787 of 2006 is made absolute. The amendment to be carried out within 2 weeks from the date on which the Writ of this order is received by the trial Court.

ii. As and when the amendment is carried out, the trial Court will consider the issue of payment of additional Court fees on the amended plaint. The trial Court will also consider whether its jurisdiction is ousted as a result of the amendment carried out to the plaint.

iii. As observed in the Judgment, it will be open for the first respondents to apply for the modification of the interim order operating in the suit.

iv. All contentions of the parties on merits of the suit are expressly kept open.

v. Writ Petition is allowed in above terms. There will be no order as to costs.

(ABHAY S. OKA, J.)